Peymaneh Nazemi & Anor v Sayed Mohammad Mahdi Mousavian & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D-22NCC-517 OF 2011
MOHAMAD ARIFF J
10 AUGUST 2012

Company Law — Directors — Fiduciary duties — Breach of — Defendants acted in wilful disregard of plaintiffs' interest — Unlawfully removing first plaintiff as director — Overcharged plaintiffs for purchase of shares — Failure to allow plaintiffs access to accounting books and records — Making secret profits from business at expense of plaintiffs — Whether breaches of fiduciary duties established — Whether calling of EGM and removal of first plaintiff as director proper — Whether defendants' conduct amounted to 'a' visible departure from standards of fair dealing and violation of conditions of fair play — Appropriate remedy for plaintiffs in circumstances of case

The parties were Iranian nationals who had entered into a confectionery and bakery business through the third defendant company ('Pars Persian Sdn Bhd'). The business had since closed. The plaintiffs' alleged that on the strength of certain representations by the first and second defendants to invest in the business, they had paid the aggregate sum of RM162,000 to the first and second defendants for the purchase of 45% shares in the third defendant company. Upon the payment of the abovementioned sum, the shares were transferred to the plaintiffs. Further, the first plaintiff ('the second plaintiff's wife') was appointed as a director in the third defendant company. The plaintiffs' alleged that the defendants had breached their fiduciary duties and obligations towards the plaintiffs'. They contended that the defendants had acted in wilful disregard of the plaintiffs' interest, excluded them from the management, removed the first plaintiff as director unlawfully, overcharged them for the purchase of the 45% shareholding while funding their own purchase of the remaining 5% of the shareholding from the previous shareholders from the purchase monies paid by the plaintiffs', failed to meaningfully allow them access to all accounting books and records, and made secret profits from the business at the expense of the plaintiffs as co-shareholders and partners. The first and second defendants however, denied the plaintiffs' averment. The first defendant had maintained the 45% shares had never been fully paid.

Held, allowing the plaintiffs' claim with costs:

(1) The second plaintiff was not cross-examined expressly on the

non-payment, nor was the case put to him that the cash credited into the Kuwait Finance House account was money belonging to the first defendant. Even the pleading had failed to expressly plead this. It merely took the form of a bare denial. This failure offends the rule in *Browne v Dunn* (1893) 6 R 67, and this failure to put the defendants' case to the second plaintiff can only result in the evidence given by the defendants as unacceptable. The defendants had therefore, by operation of this rule, could be regarded as accepting the opponent's account in its entirety (see paras 15–16).

(2) The instances of breaches of fiduciary duties owed by the first and second defendants to the plaintiffs were established. PW1 in his testimony had said that he sold his entire 50% shareholding in Pars Persian for RM135,000. The first and second defendants misrepresented the actual sale price to the plaintiffs and sold 45% of the 50% to the plaintiffs for RM160,000. It was apparent therefore that the first and second defendants obtained the 5% of the 50% shares without any additional cost. This conduct is most unfair and inequitable. This is as clear a case as any of a breach of the duty of loyalty and making a secret profit at the expense of the other partners. Such conduct amounted to 'a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect': see *Re Kong Thai Sawmill (Miri) Sdn Bhd; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v Ling Beng Sung* [1978] 2 MLJ 227 (see para 17).

(3) Further, the calling of the EGM and the removal of the first plaintiff as director was not preceded by any proper board resolution calling for an EGM. Hence, the expulsion of the first plaintiff from the Board of Directors could not be sustained. Apart from the above, pursuant to the consent judgment entered into between the parties on 17 November 2011, the first plaintiff was supposed to have been reinstated as a director but until the conclusion of the trial, this had not been done, ostensibly because she had not paid the fees to the company secretary for her reinstatement. That she should be made to pay for the fees to remedy an unlawful decision made by the first and second defendants as shareholders, make a mockery of the law. Hence, the best solution herein was to direct that the first and second defendants return the total cost of the plaintiffs' investment in the company ie RM162,000. This was the only logical outcome since the bakery itself had ceased business and its assets sold, again an act done behind the backs of the plaintiffs' (see paras 18–21).

[Bahasa Malaysia summary

Pihak-pihak merupakan warganegara Iran yang telah memulakan perniagaan konfeksi dan bakeri melalui syarikat defendan ketiga ('Pars Persian Sdn Bhd'). Perniagaan itu telahpun ditutup. Plaintif-plaintif mengatakan bahawa

berdasarkan kekukuhan representasi tertentu oleh defendan-defendan pertama dan kedua untuk melabur dalam perniagaan tersebut, mereka telah membayar jumlah agregat RM12,000 kepada defendan-defendan pertama dan kedua untuk belian 45% saham syarikat defendan ketiga. Setelah bayaran jumlah tersebut, saham-saham itu telah dipindahmilik kepada plaintif-plaintif. Selanjutnya, plaintif pertama ('isteri plaintif kedua') telah dilantik sebagai pengarah dalam syarikat defendan ketiga. Plaintif-plaintif mengatakan bahawa defendan-defendan telah melanggar kewajipan fidusiari dan tanggungjawab mereka terhadap plaintif-plaintif. Mereka berhujah bahawa defendan-defendan telah bertindak dengan sengaja tanpa menghiraukan kepentingan plaintif-plaintif, mengecualikan mereka daripada pengurusan, telah menyingkir plaintif pertama sebagai pengarah secara tidak sah, terlebih caj mereka untuk belian 45% pegangan saham pada masa sama membiayai belian mereka sendiri dengan 5% pegangan saham daripada pemegang saham sebelumnya daripada wang belian yang telah dibayar oleh plaintif-plaintif, gagal untuk membenarkan mereka mengakses semua buku dan rekod perakaunan, dan membuat keuntungan secara rahsia dari perniagaan itu dengan mengambil kesempatan ke atas plaintif-plaintif sebagai pemegang saham bersama dan rakan kongsi. Defendan-defendan pertama dan kedua, walau bagaimanapun, menafikan penegasan plaintif-plaintif. Defendan pertama telah menegaskan bahawa 45% daripada saham tersebut tidak dibayar penuh.

Diputuskan, membenarkan tuntutan plaintif-plaintif dengan kos:

(1) Plaintif kedua tidak diperiksa balas dengan jelas tentang bayaran yang tidak dibuat, mahupun kes itu dikemukakan kepadanya bahawa wang tunai yang dikreditkan ke dalam akaun Kuwait Finance House adalah wang milik defendan pertama. Pliding juga gagal memplid yang sama. Ia hanya merupakan penafian semata-mata. Kegagalan ini menidakkan keputusan dalam kes *Browne v Dunn* (1893) 6 R 67, dan kegagalan ini untuk mengemukakan kes defendan-defendan kepada plaintif kedua hanya boleh menyebabkan keterangan yang diberikan oleh defendan-defendan tidak diterima pakai. Defendan-defendan dengan itu, melalui pelaksanaan keputusan ini, boleh dianggap sebagai menerima keseluruhan keterangan lawannya (lihat perenggan 15–16).

(2) Kejadian pelanggaran kewajipan fidusiari defendan-defendan pertama dan kedua terhadap plaintif-plaintif telah dibuktikan. PW1 dalam keterangannya menyatakan bahawa dia telah menjual 50% daripada keseluruhan pegangan sahamnya dalam Pars Persian Sdn Bhd untuk RM135,000. Defendan-defendan pertama dan kedua telah membuat tanggapan salah harga jualan sebenar kepada plaintif-plaintif dan menjual 45% daripada 50% kepada plaintif untuk RM160,000. Adalah jelas bahawa defendan-defendan pertama dan kedua memperoleh 5% daripada 50% saham tanpa apa-apa kos tambahan. Perbuatan ini adalah

tidak adil dan tidak saksama. Ini adalah kes yang jelas mengenai pelanggaran kewajipan taat setia dan membuat keuntungan secara rahsia dengan mengambil kesempatan ke atas rakan kongsi lain. Perbuatan sebegini membentuk 'a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect' (lihat perenggan 17); *Re Kong Thai Sawmill (Miri) Sdn Bhd; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v Ling Bang Sung* [1978] 2 MLJ 227.

(3) Selanjutnya, mesyuarat luar biasa (MLB) yang diadakan dan penyingkiran plaintif pertama sebagai pengarah tidak dilakukan melalui apa-apa resolusi lembaga yang wajar untuk memanggil MLB. Justeru itu, penyingkiran plaintif pertama daripada Lembaga Pengarah tidak boleh dikekalkan. Selain daripada itu, menurut penghakiman persetujuan yang dimasuki antara pihak-pihak pada 17 November 2011, plaintif pertama sepatutnya telah dikembalikan jawatan sebagai pengarah tetapi sehingga tamat perbicaraan, ini tidak dilakukan, kononnya kerana dia tidak membayar fi kepada setiausaha syarikat untuk pengembalian jawatannya. Ia merupakan penghinaan mahkamah jika dia didesak membayar fi untuk memberi remedi terhadap keputusan menyalahi undang-undang yang dibuat oleh defendan-defendan pertama dan kedua sebagai pemegang saham. Justeru itu, penyelesaian paling baik adalah untuk mengarahkan defendan-defendan pertama dan kedua untuk memulangkan keseluruhan kos pelaburan plaintif-plaintif dalam syarikat itu iaitu RM162,000. Hanya inilah keputusan yang logik memandangkan bakeri itu sendiri telah berhenti berniaga dan aset-asetnya telah dijual, sekali lagi satu tindakan yang telah dilakukan tanpa pengetahuan plaintif-plaintif (lihat perenggan 18–21).]

Notes

For a case on fiduciary duties, see 3(1) *Mallal's Digest* (4th Ed, 2011 Reissue) para 1826.

Cases referred to

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors & Another Appeal [1995] 2 MLJ 770; [1995] 3 CLJ 639, CA (refd)

Browne v Dunn (1893) 6 R 67, HL (refd)

Chirndale and Another v Fay [2006] NZSC 68, SC (refd)

Kong Thai Sawmill (Miri) Sdn Bhd & Ors, Re v Ling Beng Sung [1978] 2 MLJ 227, PC (refd)

Newacres Sdn Bhd v Sri Alam Sdn Bhd [1991] 3 MLJ 474, SC (refd)

Young v Ladies' Imperial Club, Ltd [1920] 2 KB 523 (refd)

Legislation referred to

Companies Act 1965 s 181

Balvinder Singh (KS Shasha with him) (Balvinder Singh Kenth) for the plaintiffs.
N Krishna Moorthy (Fauzi Ngah & Neasa) for the defendants.

Mohamad Ariff J:

[1] The principal parties before this court are Iranian Nationals who have entered into a business venture, more precisely a confectionery and bakery business through the third defendant company (Pars Persian Sdn Bhd, which has appeared in these proceedings as a nominal defendant). The first and second plaintiffs are spouses, likewise the first and second defendants.

[2] According to the plaintiffs' pleaded case, they had paid the aggregate sum of RM162,000 to the first and second defendants for the purchase of 45% shares in the third defendant company. It was the third defendant company (Pars Persian Sdn Bhd) which owned the bakery. The business has since closed.

[3] The plaintiffs have pleaded and testified at trial that they were jointly approached by the first and second defendants to invest in the business and on the strength of certain representations which included the following:

(a) the third defendant company had a paid-up capital of RM440,000;

(b) the net tangible asset value of the third defendant was in excess of the par value of its shares;

(c) the bakery business was thriving and profitable;

(d) the former shareholders of 50% of the shareholding were prepared to relinquish the entire shareholding in the third defendant company and the plaintiffs would be entitled to acquire that 45% at a price of RM162,000;

(e) the RM162,000 would be paid to the former shareholders (through the first and second defendants);

(f) by way of consideration for negotiating with the former shareholders on the plaintiffs' behalf to sell the shares to the plaintiffs, the second defendant would be entitled to acquire the balance 5% shares from the former shareholders at the cost of the second defendant; and

(g) the plaintiffs would be entitled to participate in the business equally with the defendants and would be entitled to appoint an equal number of directors in the third defendant company.

[4] A total sum of RM162,000 being paid by 7 April 2010, the 45% of the shareholding was transferred to the plaintiffs. On the same day the shares were

transferred, the first plaintiff (the second plaintiff's wife) was appointed as a director in the third defendant company. The RM162,000 comprises RM120,000 being paid for the shares, with the remaining RM2,000 comprising secretarial fees for the transfer and registration of the shares (RM1,400) and a sum with which to open another bank account for the company (RM600) at Maybank.

[5] The plaintiffs have expressly pleaded in para 8 of the statement of claim that there was in fact and in substance a quasi-partnership between the parties and as such the first and second defendants owed various fiduciary duties and obligations to the plaintiffs on this basis. Paragraph 8 of the statement of claim is expressly admitted in the defence. See para 5 of the statement of defence. This being the express pleadings of the parties, the factual matrix therefore extends beyond the normal commercial relationship where an investor invest money in the business as a 'pure' business and he or she will be expected to act in accordance with normal facets and incidents of a commercial relationship which will include, inter alia, agreeing to be subject to majority rule at board and shareholders level, and to accept the profits as well as the losses incurred in the business.

[6] The parties agreeing that the business was based on a quasi-partnership, the law will therefore interpose a fiduciary duty to exercise utmost good faith among the partners. To this extent, the reference to the principle established in *Newacres Sdn Bhd v Seri Alam Sdn Bhd* [1991] 3 MLJ 474 by counsel for the plaintiffs is pertinent. The Supreme Court in this case clearly approved the statement of the law that the relationship between partners is a fiduciary one with the observation that it has been said that a stronger case of fiduciary relationship cannot be conceived than that which exists between partners. See the judgment of Jermuri Serjan CJ (Borneo) at p 479 of the report.

> … In the case of *James Birtchnell & Anor v The Equity Trustees, Executors and Agency Co Ltd & Anor* (1928-30) 42 CLR 384 Dixon J at p 407 explains the fiduciary relationship between partners and how the relationship is to be determined. This is what he says:
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> > The relationship between partners is, of course, fiduciary. Indeed, it has been said that a stronger case of fiduciary relationship cannot be conceived than that which exists between partners. Their mutual confidence is the lifeblood of the concern. It is because they trust one another that they are partners in the first instance; it is because they continue to trust one another that the business goes on' (per Bacon VC in *Helmore v Smith* (1890) 15 App Cas 223 at p 225; (1886) 35 Ch D 436 at p 444). The relation is based, in some degree, upon a mutual confidence that the partners will engage in some particular kind of activity or transaction for the joint advantage only. In some degree it arises from the very fact that they are associated for such a common end and are agents for one another in its accomplishment. Lord Blackburn found in this consideration alone sufficient

> reason for the fiduciary character of the partnership relation (*Cassels v Stewart* (1881) 6 App Cas at p 79). *The subject matter over which the fiduciary obligations extend is determined by the character of the venture of undertaking for which the partnership exists, and this is to be ascertained, not merely from the express agreement of the parties, whether embodied in written instruments or not, but also from the course of dealing actually pursued by the firm*. Once the subject matter of the mutual confidence is so determined, it ought not be difficult to apply the clear and inflexible doctrines which determine the accountability of fiduciaries for gains obtained in dealings with third parties. (Emphasis added.)

That passage was approved by Lord Wilberforce in the case of *New Zealand Netherlands Society Oranje Incorporated v Kuys & Anor* [1973] 2 All ER 1222 at p 1226, Lord Wilberforce says, after quoting the relevant passage of Dixon J's judgment:

> This was said in the context of a partnership but the principle must be of general application.

We would, with respect, accept this proposition …

[7] A fiduciary obligation has also been defined succinctly and pointedly as 'a duty of loyalty'. See the New Zealand Supreme Court case of *Chirndale and Another v Fay* [2006] NZSC 68.

[8] The plaintiffs say the defendants have breached their fiduciary duties and obligations towards the plaintiffs. They argue that the defendants have acted in willful disregard of the plaintiffs' interest, excluded them from management, removed the first plaintiff as director unlawfully, overcharged them for the purchase of the 45% shareholding while funding their own purchase of the remaining 5% of the shareholding from the previous shareholders from the purchase monies paid by the plaintiffs, failed to meaningfully allow them access to all accounting books and records, and made secret profits from the business at the expense of the plaintiffs as co-shareholders and partners.

[9] An important aspect of the evidence in this case relates to how the 45% shareholding was acquired by the plaintiffs. The plaintiffs and the first and second defendants were at all material times living in the same condominium complex. The plaintiffs were and are holders of Malaysian Guardianship Visas (their children are schooling in Malaysia), while the first and second defendants hold Malaysia My Second Home Visas. The bakery in question, (Bee's Bakery) was set up by the first and second defendants sometime in 2008. Two other condominium residents, Mr Hashem Ghorbanian and his wife, then became a 50% shareholder in combination. Friction occurred between the first defendant and Mr Ghorbanian which led to Ghorbanian's decision to dispose of his and his wife's interests in the bakery. According to the plaintiffs, it was at the suggestion of the second defendant that they considered to invest in Pars

Persian and the bakery business. Sometime on or about 25 Mei 2010, the first and second defendants, aside from being told the paid-up capital of the company was RM400,000 and that business was profitable and raking in between RM800 to RM1500 daily, the plaintiffs were also informed that Hashem Ghorbanian wanted to sell his shares and the first and second defendants were willing to sell 45% of these shares to them. The price quoted was RM160,000 for the 45%.

[10] There is conflicting testimony on how, and in what circumstances, the plaintiffs paid for these shares. Much time was spent in the course of the trial on how the second plaintiff and the second defendant went to the money changers at Mid Valley on two occasions to exchange Euros for Malaysian Ringgit and how sums in cash were then given to the first plaintiff as payment for the shares. The first payment in March was, apparently for RM120,000, while the second in April was for RM40,000.

[11] The first and second defendants in their defence have generally denied the plaintiffs' averment on this and have been content on the pleadings to put the plaintiffs to strict proof. In his evidence, however, the first defendant has maintained the 45% shares have never been fully paid. Indeed, the cash sum of RM120,000 and its payment into a Kuwait Finance House account of the third defendant company is said to concern the banking in of the first defendant's own money.

[12] Nevertheless, it is not disputed that the full 45% shares were transferred to the plaintiffs.

[13] On the evidence, it is with respect very difficult to accept the defendants' version of the facts on this matter of payment. In the first place, why would the shares be fully transferred to the plaintiffs if they were not completely paid for?

[14] Further, the evidence adduced of a meeting on 19 September 2010 between the first plaintiff and the first defendant in the presence of three common friends (Mohamad Hossein Rezaein, Mohamad Kavand and Amir Gastany), who were present to mediate to resolve the dispute between the parties, lends further corroboration to the plaintiff's version of the facts. Mohamad Hossein Rezaein was called as a witness during trial as PW3. The minutes of this meeting and its translation are exhibited as pp 7–8 of exh P8. The sum of RM162,000 was mentioned as the sum invested by the plaintiffs, and there is nothing in the minutes of the meeting to suggest the first and second defendants raised any objection against this. The minutes record there were some discussions on a proposed sale of the shop and the 'selling base price' was to be RM350,000 with any price changes and discounts being possible

with the agreement of partners. The minutes also record 'All bills, incomes and expenditures, and financial reporting from the beginning until now were to be delivered to Mr Mortazavi by Mr Mousavian'. Here then is credible evidence provided by an independent witness which corroborates the version of the facts given by the plaintiffs. The evidence on what transpired at the meeting is lucidly provided by PW3 in his witness statement. Question and answer 10–13 are particularly pertinent.

> There was a discussion about the dispute whereby Jamshid expressed his unhappiness with the manner in which he and his wife were being left out of the business and not provided with any proper account regarding the business of the Company. Jamshid stated a few times during the meeting that he had invested the sum of RM162,000.00 for his and his wife's shares in the Company and had yet to see any returns are even any accounts if there were losses. Jamshid also stated that he had not been given any receipts for his investment. During the meeting, on a few occasions, Mousavian became very angry and lost his temper.
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> He [Mousavian] appeared to accept the Jamshid had contributed sum of RM162,000.00 as capital for the business. I also remember that at the end of the meeting, there was a decision for both parties to sell the entire business for a value of RM350,000.00 in the event Mousavian cannot sustain the business. This figure was arrived at after taking into account the investment sum of RM 162,000.00 paid by Jamshid and approximately RM192,000.00 which Mousavian claimed was the value of his 55% shares in the business.
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> … Jamshid repeatedly asked for accounts of the business. I also impressed upon Mousavian that it is his duty to give proper account to Jamshid as a partner and Jamshid is a shareholder. However, Mousavian's response was that since he and his wife are the only working directors and shareholders he is not obliged to give accounts to non-working shareholders and directors of the Company.

[15] The second plaintiff has also submitted in the course of evidence a banking-in slip showing a payment of RM17,400 into his wife's account at Maybank which was made on the same day as the payment, of the first RM120,000 (see exh P12). He had changed Euros into, Malaysian currency at the money changers a sum of RM137,000. The balance was banked into his wife's personal account at Maybank. This is strong evidence to establish that on the probabilities of the case, there was payment made for the purchase of the shares and the first defendant's testimony is blatantly untrue.

[16] It is of course pertinent that the second plaintiff was not cross-examined expressly on the non-payment, nor was the case put to him that the cash credited into the Kuwait Finance House account was money belonging to the first defendant. Even the pleading has failed to expressly plead this, but merely takes the form of a bare denial. I agree with the argument of counsel for the plaintiffs that this failure offends the rule in *Browne v Dunn* [1893] 6 R 67, and this failure to put the (defendants' case to the second plaintiff can only result in

A the evidence given by the defendants as unacceptable. The defendants have therefore by operation of this rule to be regarded as accepting the opponent's account in its entirety.

B **[17]** On the basis of the totality of the evidence, the instances of breaches of fiduciary duties owed by the first and second defendants to the plaintiffs are established. Mr Ghorbanian himself has given evidence as PW1 where he has said that he sold his entire 50% shareholding in Pars Persian for RM135,000. The first and second defendants misrepresented the actual sale price to the C plaintiffs and sold 45% of the 50% to the plaintiffs for RM160,000. It is apparent therefore that the first and second defendant obtained the 5% of the 50% shares without any additional cost. This conduct is most unfair and inequitable, particularly in light of the first defendant informing Ghorbanian that Jamshid had agreed to purchase his entire shareholding of 50% for the D price of RM135,000. This is a clear a case as any of a breach of the duty of loyalty and making a secret profit at the expense of the other partners. And the making of a secret profit in a fiduciary relationship such as this will fall within the category of cases where courts have held, no doubt in the context of a section 181 petition, that such conduct will amount to 'a' visible departure E from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect (see *Re Kong Thai Sawmill (Miri) Sdn Bhd & Ors v Ling Bang Sung* [1978] 2 MLJ 227). The same principles should apply on the facts of this present case.

F **[18]** This conduct is compounded even more severely by what, transpired the day after the meeting on 19 September 2010. From the evidence, it seems that the newly-appointed company secretary was directed to issue a notice of an EGM at which the first plaintiff was removed as a director. The calling of this EGM and the removal of the first plaintiff as director was not preceded by any G proper board resolution calling for an EGM. In company law, notice requirements have been read strictly by the numerous cases decided by the courts. The principle established in the leading case of *Young v Ladies' Imperial Club, Ltd* [1920] 2 KB 523, for example, remains good law, and has been adopted by our Court of Appeal in *Aik Ming (M) Sdn Bhd & Ors v Chang Ching* H *Chuen & Ors & another appeal* [1995] 2 MLJ 770; [1995] 3 CLJ 639.

[19] Thus it was obvious from the beginning the expulsion of the first plaintiff from the board of directors could not be sustained. On this, there is of course the consent judgment entered into between the parties on 17 November I 2011 by which judgment was recorded in respect of the prayers in para 24 (i)–(ii) in the statement of claim with costs to be in the cause. By this consent judgment, the first plaintiff was supposed to have been reinstated as a director but until the conclusion of the trial this has not been done, ostensibly because she has not paid the fees to the company secretary for her reinstatement. That

she should be made to pay for the fees to remedy an unlawful decision made the first and second defendants as shareholders make a mockery of the law.

[20] When the consent judgment was entered into, it was understood by the parties that the plaintiffs would be given full access to the accounting books and records of the company. The first plaintiff attended two meetings for this purpose, but it appears from the evidence that the full records were not made available to her for verification, principally on the issue of actual daily and monthly turnovers of the company. There is of course the other matter relating to the purported posting of a copy of the latest accounts to her at her address which was not received. The envelope containing the documents was returned to the company secretary and it was left at that,

[21] In these circumstances, and despite the existence of a consent judgment for two of the prayers in the statement of claim, the dispute between the parties has continued and requires court resolution. Based on the evidence and the law, the plaintiffs have made out the case on a balance of probabilities and as such judgment should be entered in their favour in the best possible way to bring this dispute to a just and satisfactory conclusion. Some parallel can be drawn from cases involving oppression and disregard of minority interest in the context of s 181 of the Companies Act 1965 where in some circumstances the court can order a 'buy out' by the majority of the shares of the minority. Transposed to the facts of this present dispute, the best solution in my judgment is to direct that the first and second defendants return the total cost of the plaintiffs investment in the company ie RM162,000. It appears to me that this is the only logical outcome since the bakery itself has ceased business and its assets sold, again an act done behind the backs of the plaintiffs.

[22] Judgment is therefore to be recorded on the basis of the alternative prayer in para 24(v) of the statement of claim ie that the first and second defendants shall pay special damages to the plaintiffs in the sum of RM162,000 being reimbursement of the plaintiffs' investment sum and interest there on at the rate of 5%pa from the date of filing of the writ and statement of claim until full satisfaction. Costs of RM30,000 shall be paid by the first and second defendants to the plaintiffs.

Plaintiff's claim allowed with costs.

Reported by Ashgar Ali Ali Mohamed